

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

The Role of the Universal Service Fund)	
And Intercarrier Compensation in the)	GN Docket Nos. 09-47, 09-51, 09-137
National Broadband Plan)	

**COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL
ON NPB NOTICE # 19**

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On the Comments:

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I. INTRODUCTION

The Federal Communications Commission (“FCC” or “Commission”) seeks comment on the role of the universal service fund (“USF”) and intercarrier compensation in the National Broadband Plan.¹ The New Jersey Division of Rate Counsel (“Rate Counsel”) has participated in numerous FCC proceedings that concern broadband policies as well as in the FCC’s pending USF and intercarrier compensation proceedings. Rather than repeat positions that Rate Counsel has described in detail in its other pleadings, Rate Counsel will highlight some of its key points and refers the FCC to previous filings for more detailed discussion of these issues.

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel’s continued participation and interest in implementation of the

¹ / “Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan, Pleading Cycle Established,” DA 09-2419, released November 13, 2009, NPB Notice # 19.

Telecommunications Act of 1996.² The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will “promote efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.”³ The FCC’s decisions regarding broadband service, USF, and intercarrier compensation will affect New Jersey’s economy, welfare, and ability to compete in a global economy. The availability of affordable broadband service at reasonable speeds to all consumers has been a long-standing goal of Rate Counsel, and the ability of the nation to achieve this goal bears directly on New Jersey consumers’ ability to participate fully in today’s information-dependent society. As a net contributor to the federal USF, decisions that affect the structure and size of the USF bear directly on New Jersey consumers’ bills. The reform of intercarrier compensation also affects the rates that consumers pay and the development of competition in diverse telecommunications markets in New Jersey.

II. COMMENT

The Commission seeks comment on a wide array of topics encompassing such critically important matters as:

- The size of the USF;
- The USF contribution methodology;

² / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” or “the Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

³/ N.J.S.A. 48:2-21.16(a)(4) and 48:2-21.16(b)(1) and (3).

- Transitioning the current USF high-cost support mechanism to support advanced broadband deployment;
- The impact of the changes in current revenue flows;
- The competitive landscape;
- High-cost funding oversight; and
- Lifeline/Link Up programs.

Rate Counsel has commented on many if not all of these topics in previous filings submitted to the FCC. Among other things, Rate Counsel has been a long-time advocate of expanding universal service to include affordable broadband access; expanding Lifeline/Link Up programs to support broadband service; sunseting high cost support for voice service and instead supporting affordable broadband access to the Internet; supporting intercarrier compensation reform, provided that such reform is not predicated on a guaranteed revenue recovery for incumbent local exchange carriers; and taking steps to prevent abuse and mismanagement of federal USF subsidies.

Size of the USF and Transitioning the USF High-Cost Mechanism to Support Advanced Broadband Deployment

Rate Counsel has been a long-time advocate of expanding universal service to include affordable broadband access.⁴ Rate Counsel supports the Commission's proposed inclusion of affordable broadband as a supported service. Furthermore, any grants to improve broadband availability should be awarded to states proportionally, based either on population or households to recognize that consumers' ability to pay for

⁴ / See, e.g., In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the New Jersey Division of The Ratepayer Advocate, September 30, 2005 ("Rate Counsel 2005 USF Initial Comments"), at 26.

broadband presents as much of a barrier to connectivity as does suppliers' willingness to deploy infrastructure.⁵

The high-cost fund is long overdue for comprehensive reform: During the past thirteen years, consumers have been bearing the cost of an increasingly expensive high cost subsidy, and over this time period have paid approximately \$40 billion to industry. Total disbursements for all universal service mechanisms in 2008 reached \$7.1 billion (compared to \$2.24 billion in 2000), including \$4.48 billion for high cost support.⁶ In 2008, New Jersey received a negligible \$1.02 million of the total \$4.48 billion in high-cost support disbursements (that is, less than three-hundredths of one percent).⁷

New Jersey consumers are net contributors to the Universal Service Fund. New Jersey consumer contributions made up 3.41% of the total fund in 2007 and payments to New Jersey service providers amounted to just 0.82% of the total payments.⁸ The complexity and importance of the various universal service proceedings before the Commission can not be overstated.

⁵ / For further discussion, see, Rate Counsel comments submitted in GN Docket No. 09-51, on June 8, 2009. See also *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Comments of The New Jersey Division of Rate Counsel, April 17, 2008 ("April 2008 USF Comments"), at 7. See also *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the New Jersey Division of The Ratepayer Advocate, September 30, 2005 ("Rate Counsel 2005 USF Initial Comments"), at 26.

⁶ / Universal Service Administrative Company, 2008 Annual Report (amended April 2009), April 2009, at 55.

⁷ / Universal Service Administrative Company, 2008 Annual Report (amended April 2009), April 2009, at 47.

⁸ / Universal Service Monitoring Report, FCC CC Docket No. 98-202, prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, 2008 (Data received through June 2008), at Table 1.12.

Rate Counsel acknowledges that the purpose of the high cost fund is to make urban and rural rates comparable,⁹ and to facilitate competition by making implicit support explicit,¹⁰ but questions whether consumers have benefited during the past thirteen years by an amount commensurate with the expenditure of over \$40 billion. Urban and rural rates are comparable, and there is no evidence that continuing the high cost support is necessary to enable continued rate comparability. By supporting high cost areas, the USF should make it possible for carriers to lower rates in low-cost areas, yet Rate Counsel is unaware of rate reductions (or other benefits) that yield a consumer benefit comparable to the approximate \$40 billion in USF subsidies provided to industry.¹¹

As Rate Counsel has demonstrated in its other filings, excessive USF assessments will jeopardize USF goals. Because consumers pay for USF, as USF assessments increase, telephone service becomes less affordable, thereby thwarting the achievement

⁹ / 1996 Act, § 254(b).

¹⁰ / The 1996 Act expressly states that the support a carrier receives “should be explicit and sufficient to achieve the purposes of this section.” 1996 Act, at Section 254(e). See, also, In the Matter of Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service, FCC CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, Rel. July 10, 2003, at para. 5, stating: “One of the primary purposes of universal service support is to help provide access to telecommunications service in areas where the cost of such service otherwise might be prohibitively expensive. Historically, this purpose has been achieved both through explicit monetary payments and implicit support flows that enable carriers to serve high-cost areas at below-cost rates. Congress established principles for the preservation and advancement of universal service in the Telecommunications Act of 1996, directing the Commission to create explicit universal service support mechanisms that will be specific, predictable, and sufficient. The Commission has approached this goal by, among other things, pursuing reforms intended to make universal service explicit and portable to competitive carriers.”

¹¹ / Instead, in many jurisdictions where ILECs have been granted regulatory flexibility, they have raised rates. See, e.g., In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, FCC WC Docket No. 06-172, Memorandum Opinion and Order, ex parte filing, Pennsylvania Office of Consumer Advocate, November 7, 2007. The following is a link to these comments:

http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519810330.

of universal service. Also, most states are contributing disproportionately to USF programs: In addition to the apparently limitless increases to the high-cost fund, most states are bearing a disproportionate share of the USF burden because they contribute vastly more to the fund than is distributed to them by the fund. Rate Counsel supports the Commission's proposal to cap high cost funds and to transition the support to a Mobility Fund, a Broadband Fund, and a Provider of Last Resort Fund, such that the combined total of the three funds stays within that cap.

Rate Counsel concurs with the Federal-State Joint Board on Universal Service that none of "the mechanisms in place reflect the increased importance of non-regulated revenues generated by telecommunications plant."¹² The way in which incumbent local exchange carriers ("ILEC") assign and allocate common plant and expenses harms consumers because consumers bear the full cost of plant and yet ILECs use the common platform to provide lucrative unregulated services, the revenues from which flow to shareholders. Rate Counsel opposes providing high-cost support to ILECs unless their unregulated services are assessed for USF contributions.

Rate Counsel reiterates the recommendation it has made in previous pleadings that the Commission ensure that any high cost fund mechanism, whether for rural carriers or for non-rural carriers, not become an ILEC entitlement.¹³ Rate Counsel has previously advocated and continues to support the sunset of the non-rural high cost fund. Rate

¹² / In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 08-22, rel. January 29, 2008 ("Joint Board Comprehensive Reform NPRM"), Appendix A: Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-4, rel. November 20, 2007 ("Recommended Decision"), at para. 22.

¹³ / See, e.g., In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Comments of the New Jersey Division of Rate Counsel, March 27, 2006 ("Rate Counsel 2006 Initial Comments"), at 4-5.

Counsel urges the Commission to ensure that any kind of high cost fund (whether for voice service or for broadband service) does not become an unwarranted revenue windfall for ILECs. In assessing carriers' need for subsidies (whether in the context of broadband support, or intercarrier compensation reform), the FCC should consider the substantial stream of revenues that ILECs generate as a direct result of customers' near-monopoly reliance on ILECs for a basic link to the public switched network (e.g. revenues from switched access, toll, vertical features, bundled offerings, etc.); billions of dollars of synergies resulting from multiple mergers in the telecommunications industry; ILECs' supra-competitive earnings from special access services; and the virtual absence of competition. The original rationale for explicit non-rural high cost support does not apply to today's telecommunications market. Accordingly, Rate Counsel urges the Commission to establish a near-term sunset date for the non-rural high cost fund¹⁴ and also urges the Commission to consider establishing a sunset date for the rural high cost fund.¹⁵ Instead these funds should be targeted to provide affordable broadband to all Americans in furtherance of a national broadband plan.

Lifeline/Link-Up

Rate Counsel was an early proponent of expanding Lifeline/Link-Up to ensure that all consumers can afford access to broadband and therefore be able to participate in mainstream economic and social Internet-based transactions. Specifically, in 2006, Rate Counsel proposed putting assistance into the hands of consumers, rather than service providers:

¹⁴ / See In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Reply Comments of the New Jersey Division of Rate Counsel, May 26, 2006, at 3.

¹⁵ / See, e.g., April 2008 USF comments, at 46-47

[T]he Commission should focus not only on the *supply* of advanced services but also the *demand* for advanced services. A logical first step would be to expand the Lifeline and Linkup programs to encompass a steep discount for broadband access, which a consumer could use for any supplier. Any attempts by the Commission to narrow the digital divide should address not only high cost areas, but also low-income communities.¹⁶

Rate Counsel also stated:

By using the Lifeline program, the Commission could ensure that subsidies flow to consumers rather than to carriers, thereby linking USF support to rates, as *Qwest II* requires.¹⁷

Intercarrier Compensation, CC Docket No. 01-92; Access Charges and IP Telephony, WC Docket No. 05-276

In various comments previously submitted to the FCC, the Rate Counsel recognizes the complexity of the Byzantine collection of intercarrier compensation systems, and the pressing need for the Commission to unify them.¹⁸ The resolution of this thorny issue should not be an increase in charges to the end user. Rate Counsel recommended in CC Docket No. 01-92, and reiterated its recommendation in WC Docket No. 05-276, that the Commission reject various industry proposals that would shift revenue recovery to end users. There is a history of increasing end user charges, and industry continues to propose to increase end user charges further. However, increases in end user charges penalize low volume and low use customers. Also, as Rate Counsel has

¹⁶ / Rate Counsel 2006 USF Initial Comments, at 22-23 (emphasis in original).

¹⁷ / *Id.*, at 23.

¹⁸ / Rate Counsel submitted initial and reply comments in CC Docket No. 01-92 on May 23, 2005, and July 20, 2005, respectively, and in WC Docket No. 05-276 on November 10, 2005 and December 12, 2005. Rate Counsel also submitted comments regarding a petition filed by Frontier (and included in WC Docket No. 05-276) on January 9, 2006, and January 24, 2006.

demonstrated in other filings,¹⁹ the FCC's reform of the assignment and allocation of costs among intrastate and interstate and among regulated and unregulated services is long overdue, and until it occurs, regulated services will be bearing a disproportionate amount of common costs. Therefore, for these reasons, Rate Counsel continues to urge the Commission to reject industry proposals to shift cost recovery to end user charges. Industry may seek, in their pleadings in this proceeding, to threaten to withhold broadband deployment in the absence of a guaranteed revenue recovery, but Rate Counsel urges the Commission to reject such positions and, if, and as necessary, to seek detailed cost and revenue data from carriers.

High-Cost Funding Oversight

Oversight of all federal USF subsidies is critically important. In past filings, Rate Counsel has supported more rigorous oversight of the "E-fund", in particular to prevent abuse and waste and additional FCC oversight of the E-fund including oversight of administrator practices. Consumers ultimately pay the price of mismanagement.²⁰

III. CONCLUSION

Rate Counsel welcomes the Commission's efforts to develop a coherent telecommunications policy by which the Commission considers the inter-related universal service, broadband plan, and intercarrier compensation proceedings. Rate Counsel urges the Commission to consider the recommendations set forth in these comments as well as the numerous pleadings that Rate Counsel has submitted previously

¹⁹ / In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, joint comments of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, filed August 22, 2006.

²⁰ / Rate Counsel submitted initial and reply comments in CC Docket 05-195 on October 18, 2005, and December 19, 2005, respectively.

to the FCC. Rate Counsel fully supports a National Broadband Plan that results in affordable broadband access to all consumers, with such availability occurring in the most efficient and fair manner feasible.

Respectfully submitted,

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